



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-08056

Appearances

For Government: Gina L. Marine, Esq., Department Counsel
For Applicant: *Pro se*

06/14/2017
Decision

KILMARTIN, Robert J., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline F, financial considerations or Guideline E, personal conduct. Applicant's eligibility for access to classified information is denied.

Statement of the Case

On May 12, 2016, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. Applicant timely answered the SOR and elected to have his case decided on the written record.

Department Counsel submitted the Government's file of relevant material (FORM) on August 1, 2016. Applicant received the FORM on August 17, 2016, and had 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government's evidence, and he provided no response to the FORM. The Government's evidence, identified as Items 1 through 7, is admitted into evidence without objection. The case was assigned to me on June 1, 2017.

In the Government's FORM, Department Counsel amended the SOR to conform to the record evidence by adding delinquent debts alleged at ¶¶ 1.q to 1.u, under Guideline F (financial considerations), and ¶ 2.a under Guideline E (personal conduct). SOR ¶ 2.a alleges that Applicant falsified material facts on the SCA signed on March 11, 2015, in response to questions in section 15 – Military History – Discipline. Applicant did not answer this amendment to the SOR, or provide a response to the FORM.

Findings of Fact¹

Applicant is 31 years old. He graduated from high school in 2004 and obtained his associate's degree in 2008. Applicant has been employed by a federal contractor since November 2012. He has served in the U.S. Air Force Reserve since 2009. He had a previous security clearance in the Air Force. Applicant reports periods of unemployment including August 2008 to May 2009, and August 2006 to May 2008, while he was student. Applicant has never married, but he has a daughter born in 2015.

Applicant reported delinquent debts in section 26 of his Security Clearance Application (SCA),² including student loans from Sallie Mae in the amount of \$53,551. Applicant claimed that this delinquency resulted from his unemployment, and he has now asked for forbearance on his student loans.

In his Answer to the SOR, Applicant admitted 12 of the 16 delinquent debts alleged in the SOR totaling \$133,000. He denied only the allegations in SOR ¶¶ 1.l, 1.n, 1.o and 1.p, claiming that these were paid in full and removed from his latest credit report. However, Applicant has provided no documents or evidence to support his claims. Since he did not answer the allegations in the amendment to the SOR at ¶¶ 1.q to 1.u, these are presumed to be denied by Applicant. Also, SOR ¶ 2.a is presumed to be denied regarding the falsification allegation.

In his clearance interview on August 17, 2015, Applicant explained that he broke a lease for a rental apartment where he had lived from June 2013 to July 2014. This resulted in the delinquency at SOR ¶ 1.k. Applicant admitted that he failed to give notice to the landlord before moving from that leased apartment, and he did not pay the last month's rent. Applicant also stated that he faced rape allegations under Article 120 of the Uniform Code of Military Justice (UCMJ) in November 2010 at Sheppard Air Force Base. Applicant claimed that the sex was consensual and a videotape of the sex confirmed his contention. Nonetheless, he was found guilty of another lesser offense at Article 15 NonJudicial Punishment (NJP) and punished by a reduction in rank and forfeiture of \$800 dollars per month for six months.³ He stated that he was not trying to deceive by not listing this NJP discipline on his SCA. Instead, he no longer had the

¹ Unless stated otherwise, the source of the information in this section is Applicant's May 29, 2014 Security Clearance Application (SCA). (Item 3)

² Item 3.

³ Item 4, p. 3. Applicant was re-contacted later on August 17, 2015 via phone.

documentation to answer accurately, including the exact verbiage of the offense charged and the offense for which he was found guilty. He also stated that he may have misread or misunderstood the questions in section 15 of the SCA.

SOR ¶¶ 1.a to 1.e and 1.g to 1.i all concern delinquent student loan debts. Applicant admitted in his clearance interview that he took out these student loans from 2003 to 2005 and they exceeded \$58,000.⁴ He stated that he asked for and received forbearance exemption from making payments on these while he was in the military, but the forbearance expired in October 2014. Applicant also claimed that he was unaware of most of the delinquencies alleged in the SOR, and he had always assumed his parents were making payments on these loans, on his behalf.⁵ They were not. Applicant averred in his clearance interviews that he is now current on his rent and utilities, and beginning in August 2015 he contacted the creditor in SOR ¶ 1.p and started making payments of \$50 each month to settle that delinquent debt.⁶ He also claims to have paid off another \$159 debt. Applicant provided no evidence to substantiate these claims.

SOR ¶¶ 1.a to 1.u are not resolved. Applicant provided no response to the FORM or budgetary information. The delinquent debts alleged at SOR ¶¶ 1.q to 1.u, also concern student loans and have not been resolved. These 21 unresolved delinquent debts total \$135,000. SOR ¶ 2.a alleged a falsification in the SCA at section 15. I find that it was intentional.

Policies

This action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines promulgated in Security Executive Agent Directive 4 (SEAD 4), effective within the DOD on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶

⁴ Item 4.

⁵ Item 4.

⁶ Item 4, re-contact made on August 18, 2015.

2(a), the adjudicative process is an examination of a sufficient period and a careful weighing of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to financial considerations is set out in AG ¶18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. Financial distress can also be

caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance abuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

AG ¶ 19 provides conditions that could raise security concerns. The following apply here:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant's delinquent debts alleged in the SOR are confirmed by his credit reports, answer to the SOR, and his clearance interview (and telephonic follow-up) of August 2015. The Government produced substantial evidence to support the disqualifying conditions in AG ¶¶ 19(b) and 19(c), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.⁷ Applicant has not met that burden. None of the delinquent debts have been resolved.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control, and the individual acted responsibly under the circumstances;

⁷ Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government).

(c) the individual has received, or is receiving financial counseling for the problem from a legitimate and credible source, such as non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant endured periods of unemployment or underemployment. Arguably, these conditions were beyond his control. He has produced no documentation either with his Answer to the SOR or in response to the FORM. He has not demonstrated that he acted responsibly under the circumstances. Applicant has the burden to provide sufficient evidence to show that his financial problems are under control, and that his debts were incurred under circumstances making them unlikely to recur. The mitigating conditions enumerated above do not apply.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes....

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(a) deliberate omission, concealment or falsification of relevant facts from any personnel security questionnaire, personal history statement or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national

security eligibility determination, or other official government representative.

Since Applicant denied any intent to provide false information as alleged at SOR ¶ 2.a, his intent is an issue. Under ¶ E3.1.14 of DOD Directive 5220.6, the Government is responsible for presenting witnesses and evidence on facts alleged in the SOR that have been controverted. Intent can be inferred or determined from the circumstances. Applicant responded negatively when asked if he had been subject to court-martial or other disciplinary procedures under the UCMJ in the last seven years. The wording of the questions in section 15 of his SCA could not be more straightforward and unambiguous. It specifically asked about Article 15 NJP's. Since he had received NJP only four years before completing the SCA, it is difficult to envision any set of circumstances under which he could have misunderstood the question or forgot about the rape allegation. Applicant did not answer the question honestly. I conclude that he had the specific intent to deceive when he provided this false answer in section 15, and he deliberately falsified the SCA. SOR ¶ 2.a has not been mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline E and Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines. Most importantly, Applicant has not been candid or forthcoming in the security application process.

Applicant's finances remain a security concern. There is insufficient evidence to conclude that Applicant's financial problems are under control. He has not met his burden of persuasion. The record evidence leaves me with serious questions and

doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising under Guideline F, financial considerations or under Guideline E, personal conduct.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a to 1.u:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Robert J. Kilmartin
Administrative Judge